

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Amar L. Thakur (Bar No. 194025)  
2 amarthakur@quinnemanuel.com  
Bruce R. Zisser (Bar No. 180607)  
3 brucezisser@quinnemanuel.com  
865 South Figueroa Street, 10th Floor  
4 Los Angeles, California 90017-2543  
Telephone: (213) 443-3000  
5 Facsimile: (213) 443-3100

6 Attorneys for Defendants  
7 NOVATEL WIRELESS, INC., VERIZON  
COMMUNICATIONS, INC., AND  
8 CELLCO PARTNERSHIP D/B/A  
VERIZON WIRELESS  
9

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 CARUCEL INVESTMENTS, L.P., a  
13 Delaware limited partnership,  
14 Plaintiff,

15 v.

16 NOVATEL WIRELESS, INC., a  
Delaware corporation, AT&T  
17 MOBILITY LLC, a Delaware limited  
liability company, VERIZON  
18 COMMUNICATIONS, INC., a Delaware  
corporation, CELLCO PARTNERSHIP  
19 D/B/A VERIZON WIRELESS, a  
20 Delaware general partnership,  
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22 Defendants.  
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CASE NO. 3:16-cv-00118-H-KSC

**DEFENDANTS' EX PARTE  
APPLICATION TO SHORTEN  
TIME ON THEIR MOTION TO  
STRIKE PORTIONS OF THE  
SUPPLEMENTAL REPORT OF  
PLAINTIFF'S DAMAGES  
EXPERT PATRICK KENNEDY**

Judge: Hon. Marilyn L. Huff

1 Pursuant to Civil L.R. 7.1(e)(5), Defendants Novatel Wireless, Verizon  
2 Communications, Inc., and Cellco Partnership d/b/a Verizon Wireless respectfully  
3 request to shorten time on their Motion to Strike Portions of the Supplemental  
4 Report of Plaintiff's Damages Expert Patrick Kennedy.

5 The reason for Defendants' request is that numerous case deadlines and  
6 events are fast approaching or already underway. Most imminently, Defendants  
7 have already filed a *Daubert* motion against the opinions in Dr. Kennedy's initial  
8 Report, and one of the challenged sections of the Supplemental Report (Section VI)  
9 appears to be an attempt by Dr. Kennedy to shore up his initial opinions to resist  
10 Defendants' *Daubert* attack. Carucel's Opposition to Defendants' *Daubert* motion  
11 is due February 16. Thus, it would benefit both parties to get a prompt resolution of  
12 whether Carucel may rely on the opinions in the Supplemental Report when  
13 resisting Defendants' *Daubert* motion.

14 Looking further ahead, the deadline for Defendants to file a *Daubert* motion  
15 against the Supplemental Report itself is February 24. It would be beneficial to  
16 have the Motion to Strike adjudicated before that date, so that the parties could  
17 know whether it is even necessary to expend resources on *Daubert* motion practice  
18 over the Supplemental Report.

19 For the foregoing reasons, Defendants respectfully request to shorten time on  
20 their Motion to Strike. Specifically, Defendants request that Plaintiff's Opposition  
21 to the Motion to Strike be due three days from today (February 10) and Defendants'  
22 Reply be due three days later (February 13). Defendants additionally waive oral  
23 argument on the Motion to Strike, unless the Court desires to hear oral argument.

24 Defendants contacted Plaintiff's counsel on February 7, 2017 to see whether  
25 they would consent to this shortened briefing schedule. Plaintiff's counsel opposed,  
26 stating: "Carucel opposes the request including on the grounds that it violates the  
27 schedule already ordered by the Court and unduly burdens the plaintiff with an  
28 excessively short response time." (*See* Ex. A, attached hereto.) But the schedule

1 that Carucel refers to (Dkt. 152) sets a schedule for *Daubert* motions over  
 2 supplemental reports. (*Id.* at 2: “Any Daubert motions addressing issues related to  
 3 the supplemental expert reports must be filed by February 24, 2017.”) It does not  
 4 address motions to strike. Indeed, as explained above, a central reason for  
 5 Defendants’ application to shorten time on the Motion to Strike is to enable the  
 6 Motion to Strike to be adjudicated before Carucel’s Opposition to Defendants’  
 7 *Daubert* motion is due February 16, so that the Defendants may know what portions  
 8 of the Supplemental Report (if any) need to be addressed in their Reply brief.

9  
 10  
 11 Dated: February 7, 2017

QUINN EMANUEL URQUHART  
 & SULLIVAN, LLP

12  
 13 Bv: /s/ Amar Thakur

Amar Thakur (Bar No. 194025)  
 Email: amarthakur@quinnemanuel.com

14  
 15 *Attorneys for Defendants Novatel*  
 16 *Wireless, Inc., Verizon Communications,*  
 17 *Inc. and Cellco Partnership d/b/a Verizon*  
 18 *Wireless*  
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# **Exhibit A**

**Bruce Zisser**

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**From:** Robert Harkins <bobh@ruiyakcherian.com>  
**Sent:** Tuesday, February 07, 2017 3:24 PM  
**To:** Amar Thakur; Jim Sarnecky; Bruce Zisser  
**Cc:** 'Lindsey'; Robert Ruyak; Sunny Cherian; Novatel-Carucel  
**Subject:** Re: Carucel Investments L.P. v. Novatel Wireless et al., Supplemental Damages Report and related documents

Amar,

Thank you for sending the message, but we are confused. Defendants knew Carucel was going to file a supplemental report, the parties met and conferred, and we agreed on a schedule that included a briefing schedule in the event that Defendants believed the supplement was not well-founded. The schedule was entered by the Court as an supplemental scheduling order.

You did not provide us with the grounds for this motion to strike, but whatever they are, Defendants can include them in a motion to strike the report pursuant to the schedule we have. Given that there are other important deadlines coming up on 2/10, we also do not think it is appropriate or justified to add another one.

If you want to discuss further, we can be available for a call tomorrow morning anytime after 9 a.m. Otherwise, please note in any administrative request for shortened time that Carucel opposes the request including on the grounds that it violates the schedule already ordered by the Court and unduly burdens the plaintiff with an excessively short response time. Also, please include a copy of this message with your request.

Thank you,  
Bob

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**From:** Amar Thakur <amarthakur@quinnemanuel.com>  
**Sent:** Tuesday, February 7, 2017 5:45:07 PM  
**To:** Jim Sarnecky; Bruce Zisser  
**Cc:** 'Lindsey'; Robert Harkins; Robert Ruyak; Sunny Cherian; Novatel-Carucel  
**Subject:** RE: Carucel Investments L.P. v. Novatel Wireless et al., Supplemental Damages Report and related documents

Counsel,

This evening Defendants plan to file a Motion to Strike Sections I-IV and Section VI from the Supplemental Report of Dr. Patrick Kennedy, dated February 3, 2017. Together with the Motion to Strike, Defendants will be filing an Application to Shorten Time on the Motion to Strike. Defendants believe that it is important to give the Court the opportunity to resolve the Motion to Strike before the February 16 Opposition to the Kennedy *Daubert*, since the outcome of the Motion to Strike will very likely impact what opinions Plaintiff may cite in opposing the Kennedy *Daubert*. Defendants also believe it would be beneficial to get a ruling on the Motion to Strike before the February 24 deadline to file a *Daubert* motion against the Supplemental Report itself, so that the parties could know whether there is any need to engage in *Daubert* briefing over the Supplemental Report.

With these goals in mind, Defendants will request that Plaintiff's Opposition to the Motion to Strike be due on February 10 and Defendants' Reply be due on February 13. Please let us know today whether Plaintiff agrees to this proposed briefing schedule.

Regards, Amar

**Amar L. Thakur**

**Quinn Emanuel Urquhart & Sullivan, LLP**

865 S. Figueroa Street, 10th Floor

Los Angeles, CA 90017

213-443-3263 Direct

213-443-3000 Main Office Number

213-443-3100 Fax

[amarthakur@quinnemanuel.com](mailto:amarthakur@quinnemanuel.com)

[www.quinnemanuel.com](http://www.quinnemanuel.com)

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**From:** Jim Sarnecky [mailto:sarnecky@gdllawfirm.com]

**Sent:** Saturday, February 04, 2017 11:29 AM

**To:** Amar Thakur <amarthakur@quinnemanuel.com>; Bruce Zisser <brucezisser@quinnemanuel.com>; Novatel-Carucel <Novatel-Carucel@quinnemanuel.com>

**Cc:** 'Lindsey' <lindsey@gdllawfirm.com>; 'Robert Harkins' <bobh@ruyakcherian.com>; 'Robert Ruyak' <robertr@ruyakcherian.com>; 'Sunny Cherian' <sunnyc@ruyakcherian.com>

**Subject:** Carucel Investments L.P. v. Novatel Wireless et al., Supplemental Damages Report and related documents

Amar and Bruce,

Attached please find Patrick Kennedy's supplemental damages report along with a new version of his original report revised to reflect the AT&T settlement with Carucel.

Best regards,

Jim

James M. Sarnecky, Esq.

101 Red Cedar Dr., Suite 17

Incline Village, NV 89451

T: (760) 707-6031

email: [sarnecky@gdllawfirm.com](mailto:sarnecky@gdllawfirm.com)

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on February 7, 2017 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

DATED: February 7, 2017

By: /s/ Amar Thakur

Amar Thakur

amarthakur@quinnemanuel.com

*Attorneys for Defendants Novatel Wireless, Inc., Verizon Communications, Inc. and Cellco Partnership d/b/a Verizon Wireless*